



THE CITY OF SAN DIEGO
M E M O R A N D U M

OFFICE OF THE INDEPENDENT BUDGET ANALYST

DATE: November 2, 2010

TO: Council President Ben Hueso and Members of the City Council

FROM: Andrea Tevlin, Independent Budget Analyst

SUBJECT: OUTSTANDING ISSUES RELATED TO CITY COUNCIL
AUTHORITY IN MID-YEAR BUDGET ACTIONS AND OTHER
PENDING BUDGET MATTERS

Several issues have surfaced over the past several weeks regarding the Council's authority relative to mid-year (post-budget adoption) budget actions. The issues that have come to our attention recently relate to: 1) the Council's ability to expend infrastructure funds; 2) the Council's authority to initiate uses of the Appropriated Reserves; and, 3) the Council's authority relative to mid-year budget changes independent of the Mayor.

These issues have surfaced through different venues; and may or may not have come to the attention of all Council members. This memo summarizes these issues for your collective knowledge and discusses their status. To date, the issues remain unresolved and it is imperative that they be fully addressed prior to any upcoming budget processes. The City Attorney has agreed to comprehensively review these and other issues of City Council budget authority by early November.

Additionally, this memo discusses delays in issuance of the City's FY 2010 Year-End Report, the FY 2011 First Quarter Report, and potentially the FY 2011 Mid-Year Report.

Budgeting, Appropriation and Expenditure of Infrastructure Funds

On September 24, 2010, the City Attorney's Office issued a Memorandum of Law to Mary Lewis, CFO, whereby he opined that the process the City has followed for many years to appropriate Infrastructure funds, thus allowing the City Council to appropriate and expend individual Council District funds during the year, is inappropriate. The Mayor, Council members, the IBA and the COO were copied on the memorandum. Since receiving the

memorandum, our office has been meeting with the City Attorney's Office and Council staff to understand the issues and determine a course of action for the future. The Council President's Office is now taking the lead on this matter; and the IBA will continue to work with all Council offices and the City Attorney to develop a process for moving forward.

Use of the Appropriated Reserves

The City Council adopted the City's first Reserves Policy in July 2008. Since its inception, the reserves policy has stated the following with respect to the mid-year use of both the Appropriated and Unappropriated Reserves:

"Recommendations to use these funds would be brought forward by the Mayor or the City Council and would require approval by a majority of the City Council."

In September 2010 the CFO proposed a number of revisions to the Reserves Policy including the reference to the City Council making recommendations for the use of the reserves based on preliminary discussions with the City Attorney's Office. After further discussions, the CFO agreed to reinstate the following language for the Appropriated Reserves **only**:

"Recommendations to use these funds would be brought forward by the Mayor or the City Council consistent with the Budget Principles agreed to by the Mayor and City Council and would require approval by a majority of the City Council."

This change and other revisions were discussed at the September 15, 2010 Budget and Finance Committee meeting. At that meeting, the City Attorney's Office was asked to address the issue of the City Council's authority to initiate uses of the City's reserves. In response, the Deputy City Attorney raised concerns related to Charter Section 73 which could limit the Council's authority in this area.

The IBA noted that the Statement of Budgetary Principles was agreed upon by the Mayor and the City Council to address this exact situation. Statement 3 "Principles – Appropriation Ordinance" requires the Council to first request a funding recommendation of the Mayor; the Mayor has 30 days (or a later alternative date as determined by the Council) to respond. If the Mayor does not respond within the deadline, the Council, in consultation with the IBA, may "make and adopt changes applicable with Charter provisions."

Furthermore, Statement 6 of the Budgetary Principles states that "The Council may restore a program or service which has been recommended for elimination or reduction by the Mayor by docketing and considering such action upon the request of four Council members."

As part of their motion, the Committee requested "the City Attorney to a) provide a legal analysis regarding the Statement of Budgetary Principles, the Reserves Policy and the City Charter and determine steps to harmonize the three documents; and b) determine what actions could be taken to permanently permit the City Council to initiate requests for the use of the reserves." The City Attorney will be addressing these issues in his upcoming memorandum.

Council Role in Mid-Year Budget Actions

At the Mayor's Town Hall Budget meetings which began on October 18, 2010, the COO represented that the Council may take action on budget reductions to eliminate the projected FY 2012 \$72 million deficit as early as January 2011. However, this suggestion by the COO has not been discussed with the Budget and Finance Committee or the IBA. Given the possibility of mid-year budget reductions, our office initiated discussions with the City Attorney's Office regarding Council's authority relative to mid-year budget reductions.

It is critical that the Council know exactly what authority it has to independently propose and act on budget reductions to address the City's deficit, during a mid-year reduction process, separate from those proposed by the Mayor. The Statement of Budgetary Principles appears to be an agreement negotiated in good faith to address these gray areas, but it remains to be seen as to whether the agreement can be relied on in times of need.

Delays in FY 2010 Budget Monitoring Reporting

In coordinating the scheduling of various reports and issues to be brought to the Budget and Finance Committee, it was preliminarily agreed by the CFO and the Comptroller that the FY 2010 Year-End Report and the FY 2011 First Quarter Financial Report would be presented to the Budget and Finance Committee at its meetings of September 29 and December 1, respectively.

Since that time, issues have been identified by the CFO regarding the completeness of the City's financial data, due to the transition and implementation of OneSD. These issues have delayed the preparation of these reports and related analysis, and will also impact the timeline to produce the City's Comprehensive Annual Financial Report (CAFR). The availability of these reports is paramount to assessing the City's financial situation and determining the magnitude and urgency of possible budgetary mitigation efforts during the year. The expected timing of the FY 2011 Mid-Year Financial Report is unknown.

A comprehensive update of the FY 2012-2016 Five Year Financial Outlook is still expected in January 2011, assuming the availability of updated FY 2011 data.

Interim Performance Measures

In June 2010, the Mayor suspended the City's new Performance Measurement Program. In September, following a number of discussions regarding this matter, the Mayor agreed to the IBA's proposal to develop "Interim Performance Measures" for the FY 2012 budget process. The Performance Measurement Program had been suspended because of the significant budgetary reductions impacting City operations, and due to efforts to revise the City's Strategic Plan. Each City department is currently preparing four to five measures, and it is planned that a list of these interim measures will be presented to the Budget and Finance Committee in January 2011 for review and approval. The FY 2011 Proposed Budget will include these interim measures, reflecting data representing FY 2010 actual and FY 2011 estimated results.

Summary

While these issues differ in their specifics, the overarching theme continues to be the role of the Mayor versus that of the City Council in the Strong Mayor/Strong Council form of government when it comes to matters of budget authority. Despite numerous efforts over the past four years to address these issues through various principles, policies and legal opinions, no clear roadmap exists for effectively navigating these issues in this form of government. The City Attorney has agreed to address this matter by early November in preparation for upcoming budget processes. It is imperative that all issues, including the FY 2010 financial status reports, be addressed prior to upcoming budgetary processes and requests for Council action related to the budget.

These issues will be discussed at the November 10 Budget and Finance Committee. This memorandum is being provided to all members of the City Council to ensure all are kept informed of the status as these important issues evolve.



Andrea Tevlin
Independent Budget Analyst

cc: Mayor Jerry Sanders
Jay Goldstone, Chief Operating Officer
Mary Lewis, Chief Financial Officer
Mark Leonard, Financial Management Director
Jan Goldsmith, City Attorney